



**NCTA**

NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

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December 17, 2004

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, D. C. 20554

**Re: MB Docket No. 04-227**

Dear Ms. Dortch:

On December 16, 2004, Dan Brenner, NCTA Senior Vice President for Law and Regulatory Policy, Greg Klein, Senior Director of Economic and Policy Analysis, Loretta Polk, Associate General Counsel, and David Nicoll, Associate General Counsel met with Johanna Mikes Shelton, Legal Advisor to Commissioner Jonathan S. Adelstein of the Federal Communications Commission, regarding the annual inquiry on the status of competition in the market for the delivery of video programming (also known as the annual Video Competition Report).

In particular, we discussed issues related to Section 612(g) of the Communications Act, which provides that “at such time as cable systems with 36 or more activated channels are available to 70 percent of households within the United States and are subscribed to by 70 percent of those households, the Commission may promulgate any additional rules necessary to provide diversity of information sources.” 47 U.S.C. § 612(g).

We explained that there are three independent data sources that could be used in analyzing whether the 70/70 threshold has been met. In addition to Warren Communications, which the Commission relied on in last year’s Video Competition Report, there is Nielsen’s FOCUS data and Kagan Research LLC’s data sources. While there is no complete cable system census data source in the industry, these sources provide information on cable subscribers and total homes passed by cable. Based on our analysis of the data from all three sources, Warren, Nielsen and Kagan, over 70 percent of U.S. households within the United States are passed by cable systems with 36 or more channels. However, as shown below, the penetration rate for those systems under all three sources is below the 70 percent threshold.

|                                       | Warren<br>Communications<br>(Dec 2004)<br><u>36+ channels</u> | Analysis of<br>Nielsen FOCUS<br>Systems that<br>report all Data<br>N= 6,236<br>(Dec 9, 2004)<br><u>36+ Channels</u> | Analysis of Nielsen<br>FOCUS<br>Adjusted to Reflect<br>Systems that did not<br>report Homes<br>Passed Data<br>N= 7,650 <sup>1</sup><br>(Dec 9, 2004)<br><u>36+ Channels</u> | Kagan<br>Research<br>(Year End<br>2004)<br><u>All Cable<br/>Systems</u> |
|---------------------------------------|---|---|---|---|
| Cable Subscribers                     | 57,994,267  | 54,041,966  | 69,920,705  | 66,200,000  |
| Homes Passed                          | 83,588,515  | 84,214,044  | 109,024,574   | 120,300,000   |
| Cable Penetration<br>as Percent of HP | 69.38%  | 64.17%  | 64.17%  | 55.03%  |

We also explained that the Warren data, in particular, is problematic because its number of subscribers and homes passed by 36-plus channel systems is dramatically lower than industry wide estimates from Kagan Research. It also dramatically differs from the analysis of Nielsen FOCUS 36-plus channel systems adjusted to reflect systems that did not report homes passed data.

In summary, under any of the relevant data sources, the Section 612(g) benchmark on cable penetration has not been met. And in light of the growth of new competitors in the video marketplace and the steady decline in cable's share of multi-channel video subscribers, it seems unlikely that it will be met in the foreseeable future.

<sup>1</sup> According to Nielsen data, there are a total of 7,650 cable systems in the United States with a channel capacity of 36 or greater. The Nielsen FOCUS database compiles system data for all cable headends in the United States, but because of questionnaires being returned incomplete it contains complete data for only 6,236 "36+ channel" systems. In particular, the Nielsen FOCUS database is missing specific "Homes Passed" data from 1,414 "36+ channel" systems. These 1,414 systems comprise subscribers totaling nearly 15.9 million. We know the number of subscribers for the smaller group of systems (15.9 million) but we need to estimate the number of "Homes Passed" by those systems (which is a larger number). To estimate the number of "Homes Passed" for these 1,414 systems, NCTA used the average penetration rate of the 6,236 systems that reported complete data to Nielsen as a proxy. These systems have a 64.17% penetration rate. So given that "Homes Passed" [X] x "Penetration Rate" [.6417] = "Number of Subscribers" [15.9 million], NCTA solved for "Homes Passed" and estimates that the 1,414 systems that did not report "Homes Passed" data would pass an estimated 24.8 million homes [24.8 x .6417=15.9]. Therefore, the 7,650 "36+ channel" systems serve a total of 69.9 million subscribers [54.0 million (6,236 systems) + 15.9 million (1,414 systems)] and pass 109 million homes [84.2 million (6,236 systems) + 24.8 million (1,414 systems)].

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If you have any further questions, please contact me or others listed above in the NCTA Legal Department.

Respectfully submitted,

**/s/ Daniel L. Brenner**

Daniel L. Brenner

cc: Jon Cody  
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